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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/841,451 | 04/24/2001 | Leslie E. Mace | 4502US | 5355 |

24247 7590 04/09/2003

TRASK BRITT
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SALT LAKE CITY, UT 84110

EXAMINER

NASSER, ROBERT L

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3736

DATE MAILED: 04/09/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/841,451

Applicant(s)

Mace et al

Examiner

Robert Nasser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 30, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-97 is/are pending in the application.
- 4a) Of the above, claim(s) 31-41, 50-74, and 89-97 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-19, 21-30, 42-49, 75-77, 79, 81-84, 86, and 88 is/are rejected.
- 7) ☒ Claim(s) 9, 20, 78, 80, 85, and 87 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 7, 9, 11 6) ☐ Other:

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Applicant's election without traverse of Species I of Group A and Species I of Group B in Paper No. 14 is acknowledged. Claims 1-30, 42-49 and 75-88 are drawn to the elected embodiment.

Claims 31-41, 50-74, and 89-97 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson et al. Anderson et al 4440177 has a respiratory monitoring device with a housing 10 having a bore, a flow sensor 66 communicating with the bore and a first and second detectors 74 and 80. The flow sensor is a differential pressure flow sensor.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 7, 22-27, 42-49, 75-77, 79, 81-84, 86, and 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al '177 in view of Labuda et al. In addition to the features shown above, the carbon dioxide sensor of Anderson is an infrared sensor. The oxygen sensor is not a luminescence quenching sensor. However, Labuda et al teaches that a luminescence quenching sensor is a known oxygen measuring sensor. Hence, it would have been obvious to modify Anderson et al in view of Labuda et al to use a quenching sensor, as it is merely the substitution of one known sensor for another. The combination shows the remaining claim features, noting with respect to 47 and 48 that the window is configured to measure any respiratory airborne parameter.

Claims 3-6, 10-19, 21 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al in view of Kofoed et al 5789660. Anderson does not show the structure of flow tube and its relationship to the analyte measure devices. Kofoed et al teaches a device making similar measurements that has the recited structure, which result in a compact device. Hence, it would have been obvious to modify Anderson et al to use the structure taught by Kofoed et al, to reduce the size of the device. The examiner notes that each monitor of the combination would have the structure of the monitor of Kofoed et al.

Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al in view of Kofoed et al as applied to claims 3-6, 10-19, and 21-28 above, and further in view of Labuda et al. In addition to the features shown above, the carbon dioxide sensor of Anderson is an infrared sensor. The oxygen sensor is not a luminescence quenching

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sensor. However, Labuda et al teaches that a luminescence quenching sensor is a known oxygen measuring sensor. Hence, it would have been obvious to modify the above combination in view of Labuda et al to use a quenching sensor, as it is merely the substitution of one known sensor for another.

Claims 9, 20, 78, 80, 85, and 87 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Anderson et al 5,398,695 and Binder et al measure two parameters and flow in a respiratory measuring device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser Jr. whose telephone number is (703) 308-3251. The examiner can normally be reached on Monday-Thursday and alternate Fridays from 8:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg, can be reached on (703) 308-3130. The fax phone number for this Group is (703) 308-0758.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [max.hindenburg@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.

Robert L. Nasser Jr.

ROBERT L. NASSER
PRIMARY EXAMINER